CF0000059393

(1) (2)

C.A 1402/96

/- APPEAL OF PRISONER -/

No. 452 Name तेलम मुरा

Father's Name डुगा Resident ग्राम - तुमनार
थाना - बीजापुर

Age 32 Sentenced to आजीवन कारावास on 10/6/96

Under Section 302 I.P.C by III अति० सत्र न्यायाः
जगदलपुर

S.T.No. 299/94

It is explained to the prisoner that if he states or wishes to be represented by a legal practitioner the Appellate Court will not proceed with the base for seven days unless the legal practitioner appears. If the legal practitioner does not appear within seven days he may be heard at all if legal practioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

1. Date of applicatin for copy of Judgement :- No.
2. Date of which copy received :- 10.6.96
3. Date on which appeal sent :- 16.6.96
4. Whether the prisoner wished to be represented or not. Yes/No

No. 452 Name तेलम मुरा पिता डुगा

Continued in जिला Jail जगदलपुर

No. 334 / अट्ठकोण Dated 16/6/96

Forwarded to the CHIEF JUDICIAL MAGISTRATE Jagdalpur together with a copy of Judgement or order passed in the case for favour of transmission to the proper Appleate Court.

Superintendent-Central/Distt/Sub-Jail.

Date of receipt in C.J.M's Office. 22.6.96

Date of receipt of record to accompany.-

Memo of Appeal of the Appellate Court. -

No. 1021 dated 22.6.96

Forwarded to the Hible Sessions Judge Jagdalpur

C.H.MAGISTRATE.....

.....

Date of receipt in Applicate Court:

XI-HC-22

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आदेश पत्रक

मामला क्रमांक G.A./402/96 सन् ~~200~~

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH: -

HON'BLE MR. L.C. BHADOO AND
HON'BLE MR. V.K. SHRIVASTAVA, JJ.

22-12-2005

Mrs. Kiran Jain, counsel for the appellant.

Mr. Alok Bakshi, Govt. Advocate for the State/respondent.

Oral judgment.

By this appeal through the Superintendent, District Jail, Jagdalpur, accused Telam Mura has questioned the legality of judgment of conviction and sentence dated 10-6-1996 passed by the 3rd Additional Sessions Judge, Bastar at Jagdalpur in Sessions Trial No.299/94, whereby learned Additional Sessions Judge after holding the accused/ appellant guilty for the commission of offence under Section 302 of the I.P.C. sentenced him to undergo imprisonment for life.

The prosecution case, in brief, is that Telam Bhimay (PW-2) gave merg intimation Ex.P-9 on 20th February, 1994, in Police Station: Bijapur to the effect that yesterday night she and her father Kudiyam Chinna went for sleep in the courtyard after burning the fire and her brother-in-law, accused Telam Mura went for sleep in his room, at about 11 in the night when she woke up and started warming ~~up~~ her body from the burning fire, accused Mura came near her and said that her father is providing food to dog and hen and not providing food to him, therefore

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मामला क्रमांक G.A.1402/96 सन् ~~200~~

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित — 2 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

he will assault him and she should leave the place, on which she went towards the kitchen garden and saw that accused Mura picked up the burning wood and assaulted many times on the head of her father and left the place. Thereafter, she went near her father and saw that he was dead, there were several injuries on his head and she apprised about the fact to Banja. Next day morning Banja & Pandu were informed and Patel, Kotwar & Sarpanch were also informed. They came and saw the body, and convened Panchayat in which the accused made extra judicial confession regarding the commission of crime.

On receiving this report, Dharamraj Pandey, ASI, registered the F.I.R. Ex.P-6 and left for the scene of occurrence. After giving notice Ex.P-7 to Panchas, he prepared the Panchnama Ex.P-8 of the body of Kudiyam Chinna and sent the body for post-mortem examination to the Primary Health Centre, Bijapur, where Dr. A.R. Gota conducted post-mortem on the body and prepared the post-mortem report Ex.P-2 in which he opined that the mode of death is comma due to injuries and the death is homicidal in nature. The wooden piece was taken into possession, same was sent to the Assistant Surgeon, Primary Health Centre, Bijapur under Ex.P-4, the doctor gave his opinion Ex.P-4A and opined that the wooden piece shown to him could cause all the injuries which were found on the body of the deceased. The accused was also sent for medical examination under Ex.P-5, he was examined and the

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

injury report Ex.P-5A was prepared in which the abrasion mark on left arm just above the left elbow joint was found. The site plan Ex.P-10 was prepared. The weapon of offence i.e. the teak wood piece was taken into possession under Ex.P-11. Plain soil and blood stained soil was taken from the place of occurrence under Ex.P-12. Clothes of the deceased were taken into possession under Ex.P-13.

After completion of investigation, charge sheet was filed in the Court of Judicial Magistrate, First Class, Jagdalpur, who in turn committed the case to the Sessions Judge, Jagdalpur, from where learned Additional Sessions Judge received the case on transfer for trial.

The prosecution in order to prove charge against the accused/ appellant examined five witnesses. Statement of the accused was taken under Section 313 of the Cr.P.C. in which he denied the prosecution evidence and stated that he is innocent and has been falsely implicated in the crime. Learned Additional Sessions Judge after hearing the arguments of Additional Public Prosecutor and counsel for the accused convicted and sentenced the accused as mentioned in para 1 of this judgment.

We have heard Mrs. Kiran Jain, learned counsel for the appellant and Mr. Alok Bakshi, learned Govt. Advocate on behalf of the State/ respondent.

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The fact of homicidal nature of death of Kudiyam Chinna has not been disputed by learned counsel for the appellant. Apart from that, from the evidence of eyewitness namely Telam Bhimay (PW-2) who witnessed the crime and the evidence of Telam Kowaram (PW-3) & Telam Budru (PW-5) before whom the accused made extra judicial confession, and the medical evidence of Dr. A.R. Gota (PW-1), it is established that the death of Kudiyam Chinna was homicidal in nature.

Now, coming to the involvement of the accused/appellant in the crime in question, Telam Bhimay (PW-2) was the eyewitness to the incident who has stated that when her father was sleeping, the accused came and assaulted him on his head with a wooden club, and he continuously assaulted eight times as a result of which her father received injuries on the head. She informed about the said incident to village Patel & Sarpanch and lodged the report Ex.P-6 at Police Station: Bijapur. In the cross-examination of this witness, defence has not been able to elicit any fact, which makes the evidence of this witness unreliable or untrustworthy. She is the daughter of the deceased, therefore, her presence in the house was natural.

Apart from that, Telam Kowaram (PW-3) has stated in his evidence that after the murder of Kudiyam Chinna, Panchayat was convened in that connection in which accused Telam Mura was also called and in the Panchayat, he made extra judicial confession that he has

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

committed the murder of Kudiyam Chinna. The police came to their village where after giving notice, Panchnama Ex.P-8 was prepared. The evidence of PW-3 Telam Kowaram has been corroborated by PW-5 Telam Budru who has stated that in the Panchayat the accused made extra judicial confession. In the cross-examination of these two witnesses, nothing has been elicited which makes the evidence of these witnesses unreliable.

Moreover, the evidence of the eyewitness stands corroborated by the medical evidence of Dr. A.R. Gota (PW-1) who has stated that on 22-2-1994 post-mortem was conducted by him on the body of Kudiyam Chinna and he noticed six injuries on the head & face. Telam Bhimay (PW-2) has stated that the accused assaulted with the wooden club on the head of the deceased. Therefore, in view of this eyewitness's evidence, the evidence of Telam Kowaram (PW-3) & Telam Budru (PW-5) before whom the accused made extra judicial confession, and the medical evidence, it is established that the accused was the author of the crime in question in which Kudiyam Chinna was done to death.

Learned counsel for the accused/appellant argued that the deceased was not providing food to the accused, which enraged the accused, and in the fateful night without any pre-plan, the accused, all of a sudden, picked up the burning wooden club and assaulted with the same. Therefore, the offence against the accused/appellant does not

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -6-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

travel beyond Section 304 Part-I of the I.P.C. In support of her argument, learned counsel placed reliance on the judgment of the Supreme Court in the matter of Thangaiya v. State of Tamil Nadu reported in 2005 Cri.L.J. 684.

On the other hand, Mr. Alok Bakshi, learned Govt. Advocate for State/respondent supported the judgment of the trial Court.

In order to appreciate the argument advanced by learned counsel for the appellant, if we see the evidence of PW-2 Telam Bhimay, she has stated that the accused came to the site where her father was sleeping and assaulted him with a wooden club eight times. Perusal of the evidence of Dr. A.R. Gota (PW-1) shows that following injuries were found on the body of the deceased: -

1. lacerated wound on the eye brow of the right eye in the size of $1\frac{3}{4}$" x $\frac{1}{4}$" x skin deep;
2. lacerated wound on the right side of the forehead oblique in nature in the size of 2 $\frac{1}{4}$" x $\frac{3}{4}$" x skin deep;
3. lacerated wound on the right parietal region in the size of 3" x $\frac{3}{4}$" x skin deep;
4. lacerated wound on the left check, left eye was damaged and the injury was in the size of 3" x $1\frac{1}{2}$" x $\frac{1}{4}$", pinna of the left ear was also lacerated in the size of 2" x $\frac{1}{2}$" x $\frac{1}{4}$"; and

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -7-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

5. all the bones of left temporal region were fractured and clotted blood was present on the brain.

All these injuries were sufficient to cause death and were ante-mortem in nature.

In the matter of **Thangaiya (supra)**, the Apex Court has held that in order to find out the type of offence committed by the accused, the weapon of offence used, size of weapon, place of assault, facts leading to the assault, part of the body where the injury is inflicted and background facts leading to the assault are the factors to be considered.

Based on this judgment, if we look into the above facts of the case, PW-2 Telam Bhimay, the eyewitness, has stated that the accused assaulted her father Kudiyam Chinna on the head with the wooden club. As per the medical evidence, as many as five injuries were inflicted on the head of the deceased and even the bones of the left temporal region were fractured. The doctor has opined that all the injuries were sufficient to cause death. Therefore, from the above facts, it is evident that the accused assaulted the deceased with the wooden club continuously and the deceased sustained five injuries on his head, which resulted into spontaneous death of Kudiyam Chinna. Hence, the intention of the accused was to cause death of the deceased and that is why he caused so many injuries on the vital organ of the body. In the

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circumstances, the accused has rightly been convicted of the offence of murder of Kudiyam Chinna. Looking to the above facts and circumstances of the case, the argument advanced by learned counsel for the appellant has no force.

Therefore, we are of the considered opinion that the finding of the trial Court convicting the accused/appellant for the offence under Section 302 of the I.P.C. does not require any interference by this Court.

In the result, the appeal is devoid of merit, same is liable to be dismissed and it is accordingly, dismissed.

Sd/-
V.K. Shrivatava
Judge

Sd/-
L.C. Bhadoo
Judge

Soma

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